



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Brambleton Group, L.L.C.
FOR
Brambleton Phase II
Sections 32, 34 & Active Adult
Unpermitted**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Brambleton Group, LLC, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Brambleton" means Brambleton Group L.L.C. a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Brambleton is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
6. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
11. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
12. "Site" or "Project" means the Brambleton Phase II development consisting of a mix of residential and commercial property. The Brambleton development is located in Loudoun County, Virginia in the vicinity of Ryan Road.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
15. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
16. "Va. Code" means the Code of Virginia (1950), as amended.

17. "VAC" means the Virginia Administrative Code.
18. "VWP" means Virginia Water Protection.
19. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Brambleton is the developer and prior permit holder (VWP IP# 03-2118) for the Project. This permit was issued on February 24, 2004, and expired on February 23, 2019.
2. Brambleton submitted a new Virginia Water Protection Individual Permit application (Joint Permit Application Number 21-2061) on October 4, 2021.
3. DEQ staff requested an application site inspection and to field verify the application's USM forms. On November 5, 2021, DEQ staff inspected the Site and observed unauthorized surface water impacts associated with road, storm water management, and utility infrastructure requested for authorization under Joint Permit Application No. 21-2061. Construction of the expansion of Ryan Road was ongoing during the site visit.
4. The following surface water impacts were observed during the inspection:
 - a. Construction of the expansion of Ryan Road east of the intersection with Beaverdam Road was ongoing during the site visit. The two northern most impact areas (North of Ryan Road) have been taken (both measuring 62 linear feet, 124 feet total). Outfall infrastructure perpendicular to and south of Ryan Road was in place and at significantly lower grade than the receiving stream channel located to the west of the outfall.
 - b. The existing clean water diversion north of Ryan Road extended into surface waters, resulting in 105 linear feet of unauthorized impact to stream channel at this location.
 - c. Construction of the expansion of Ryan Road just west of the intersection with Breezy Hollow Drive was ongoing during the site visit; resulting in the unpermitted impact to 105 linear feet of stream channel. Riprap had been placed in the stream channel beyond proposed impact limits at the culvert outlet north Ryan Road. Minimal erosion and sediment control measures were in place at the culvert crossing location.
5. Total unpermitted impacts were observed at 334 linear feet of stream channel.
6. Va. Code §62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit the filling of surface waters without a permit issued by the Director. The impacts described in paragraphs C (3) through C (5) are not authorized a VWP permit.

7. NRO issued a Notice of Violation (NOV# 2111-002027) for the violations noted on November 18, 2021.
8. On December 6, 2021, DEQ staff met with representatives of Brambleton to discuss the NOV and DEQ's observations from the site inspection. Brambleton stated the impacts were an oversight and they believed at the time they had permit coverage.
9. Based on results of the November 5, 2021, site inspection, the December 6, 2021, conference call with Brambleton, associated review of DEQ files, and related correspondence between DEQ and Brambleton, the Board concludes Brambleton has violated Va Code §62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 for unauthorized impacts to surface waters as described above in paragraphs C(1) through C(8).
10. In order for Brambleton to return to compliance, DEQ staff and representatives of Brambleton have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Brambleton, and Brambleton agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$19,500** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Brambleton shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Brambleton shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Brambleton for good cause shown by Brambleton, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2111-002027 dated November 18, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Brambleton admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Brambleton consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Brambleton declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Brambleton to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Brambleton shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Brambleton shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Brambleton shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are

occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Brambleton.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Brambleton has completed all of the requirements of the Order;
 - b. Brambleton petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Brambleton .

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Brambleton from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Brambleton and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Brambleton certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Brambleton to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Brambleton.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Brambleton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2022.

Thomas A. Faha, Regional Director
Department of Environmental Quality

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The Brambleton Group L.L.C. voluntarily agrees to the issuance of this Order.

Date: 2/24/22 By: [Signature], Vice President
(Person) (Title)
Brambleton Group, L.L.C.
Stephen Schulte

Commonwealth of Virginia
City/County of Prince William

The foregoing document was signed and acknowledged before me this 24th day of February, 2022, by Stephen Schulte who is Vice President of the Brambleton Group L.L.C., on behalf of Brambleton Group L.L.C..

[Signature]
Notary Public
7724997
Registration No.



My commission expires: 12/31/25

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

Brambleton Group L.L.C. shall:

1. Immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit.
2. Develop a Corrective Action Plan (CAP) that meets the requirements of 9 VAC 25-210-116 to address the recommended corrective actions in the November 5, 2021, VWP Inspection Report. The CAP must be sufficient to achieve no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. The CAP shall be submitted to DEQ for review and approval within 20 days of the Order taking effect. Brambleton shall respond to any DEQ Notice of Deficiency or requests for additional information within 14 days.
3. Upon DEQ approval of the CAP, Brambleton shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Brambleton shall complete the CAP in accordance with its terms.
4. Brambleton shall purchase 336 stream mitigation credits or contribute to an in-lieu fund, as approved by DEQ, and within 30 days of DEQ approval. Brambleton shall submit proof of purchase of credits from a DEQ-approved mitigation bank or in-lieu fee fund that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.
5. Unless approved by DEQ in writing at a later date, all items required by the CAP, including monitoring of restored areas, reporting of restoration monitoring to DEQ, and the purchase of any applicable compensatory mitigation credits if required in accordance with the CAP, are to be completed no later than 90 days from the date the Order takes effect.
6. Unless otherwise specified in this Order, Brambleton shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193